CHINS

9/29/17

In **In Matter of E.K.**, 83 N.E.3d 1256 (Ind. Ct. App. 2017), the Court reversed the trial court's order adjudicating Parents' child to be a Child in Need of Services. Id. at 1263. In October 2016, the child was three years old and was still wearing diapers. On October 14, a daycare provider noticed bruising on the child's buttocks when changing his diaper and noticed that the child was in discomfort when sitting down. The daycare facility contacted DCS to report the bruising. The child had been attending the daycare for about two years, and no prior reports had been made to DCS about the child. A DCS case manager began investigating the report and photographed the child's buttocks. Father admitted to the case manager that he had spanked the child on the evening of October 13 because the child refused to calm down and go to sleep. According to Parents, the child frequently had temper tantrums at bedtime and refused to go to sleep. On October 13, the child's bedroom door was closed and he was kicking the door, tearing the window blinds, throwing himself on the floor, and throwing his toys around the room. Father attempted to talk to the child to calm him, progressed to removing the child's toys, and then removed the child's television. Father spanked the child twice while the child was wearing his diaper, but the child did not calm down. Finally, Father spanked the child a third time on his bare buttocks, and the child went to sleep shortly thereafter. Mother was aware of the spanking but did not witness it. Father said he had used spanking as discipline for the child on about three occasions. Father believed that a spanking posed less threat of harm to the child than the continued tantrum.

On October 17, 2016, Father and Mother met with the DCS case manager and signed a "safety plan" which prohibited Parents from using physical discipline with the child. The child was not removed from Parents' care. Afterwards, Parents and the child regularly participated in a home-based family counseling program, which Parents believed was helping them to better parent the child and address his tantrums. Parents planned to continue their participation in the home-based counseling program. There was no evidence that Parents used corporal punishment with the child, but the child injured his ankle kicking his bedroom door during another bedtime temper tantrum in December 2016. Father readily completed a psychological examination, after which he was diagnosed with bipolar disorder, obsessive compulsive disorder, post-traumatic stress disorder, and attention deficit hyperactivity disorder. He was prescribed medication for those conditions, which he takes regularly, but had not been referred to therapy by the time of the factfinding hearing. The trial court held the CHINS factfinding hearing on February 7, 2017. No evidence was presented that Parents had failed to cooperate with DCS or that they had violated the "safety plan." There was no evidence that the child suffered from any psychological or physical problems, and no evidence that Parents' home was inadequate. On February 7, 2017, the

trial court entered its findings of fact, conclusions of law, and order finding the child to be a CHINS. Parents appealed.

The Court found there was insufficient evidence that the coercive intervention of the court was necessary to protect the child, and reversed the CHINS adjudication. Id. at 1263. Quoting Matter of D.P., 72 N.E.3d 976, 980 (Ind. Ct. App. 2017), the Court explained: (1) DCS bears the burden of proving by a preponderance of the evidence that a child is a CHINS; (2) a CHINS determination is based on the best interests of the child, not the "guilt or innocence" of either parent; (3) "[t]he purposes of a CHINS case are to help families in crisis and to protect children, not punish parents." E.K. at 1260-61. The Court noted that the government is permitted to forcibly intervene in a family's life only if the family cannot meet a child's needs without coercion—not merely if the family has difficulty meeting the child's needs. D.P. at 980. E.K. at 1261. Quoting In re D.J. v. Indiana Dep't of Child Servs., 68 N.E.3d 574, 580-81 (Ind. 2017), the Court also noted that when determining whether a child is a CHINS, particularly in weighing the "coercive intervention" element, courts "should consider the family's condition not just when the case was filed, but also when it is heard." E.K. at 1261.

The Court observed that: (1) DCS's intervention was based upon one incident in which Father spanked the child too hard in an effort to cease an ongoing temper tantrum; (2) there was no evidence that Father had previously excessively disciplined the child; (3) after the incident, Parents fully cooperated with DCS and did not violate the prohibition on corporal punishment in the DCS "safety plan"; (4) Parents voluntarily engaged with a home-based counseling program, which they believed was helping them to better address the child's temper tantrums, and they planned to continue that program; (5) Father underwent a psychological evaluation and was complying with treatment recommendations; (6) there was no evidence that the child's basic needs were ever neglected or endangered; (7) DCS never felt it was necessary to remove the child from Parents' care. Id. at 1261-62. The Court was not persuaded by DCS's arguments that coercive intervention was needed because of the incident in which the child injured his ankle during another bedtime temper tantrum. Id. at 1262. The Court also could not say that Father's mental health problems supported a CHINS finding. Id. The Court insisted that DCS stop citing In re M.R., 452 N.E.2d 1085, 1089 (Ind. Ct. App. 1983) for the principle that the court may infer coercive intervention is necessary if a CHINS condition exists, because the M.R. case directly conflicts with subsequent cases from the Indiana Supreme Court. E.K. at 1261 n.3.